Filed 11/16/16 In re A.S. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. A.S., Defendant and Appellant.	E065614 (Super.Ct.No. RIJ1301211) OPINION

APPEAL from the Superior Court of Riverside County. Robert J. McIntyre (Retired Judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) and Roger A. Luebs, Judges. Reversed and remanded with directions.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel, Theodore M. Cropley, and Ryan H. Peeck, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant A.S. (minor) appeals from the juvenile court's order denying his request to seal his school records pertaining to the juvenile court proceedings. For the reasons explained below, we reverse and remand this matter to the juvenile court.

I

FACTUAL AND PROCEDURAL BACKGROUND[1]

On August 23, 2013, minor was stopped while at school because he smelled of marijuana. After being taken to the school office, minor pulled two baggies of marijuana from his pockets. Minor admitted that he sold marijuana to help his family make money. He also stated that the rest of his marijuana was kept at home. After minor's mother consented to a search of her home, law enforcement found a backpack containing $95, three jars of marijuana, baggies, and a scale. The deputy also found brass knuckles in minor's bedroom.

On November 1, 2013, a juvenile petition was filed alleging that minor possessed marijuana for sale (Health & Saf. Code, § 11359) and that minor possessed metal knuckles (Pen. Code, § 21810).

[1] The factual background is taken from the probation officer's report.

On January 6, 2014, minor admitted the allegations in the petition. Minor was thereafter declared a ward of the court and placed on probation.

On December 1, 2015, minor filed a motion to terminate his wardship and dismiss the petition due to his successful completion of probation.

On December 10, 2015, the juvenile court granted minor's motion, terminated his wardship, and dismissed the petition.

On February 29, 2016, minor moved to seal his records pursuant to Welfare and Institutions Code section 786.[2] The court granted minor's request to seal minor's court records, but denied his request to seal the records held by his school district.

On March 16, 2016, minor filed a timely notice of appeal.

II

DISCUSSION

Minor argues the juvenile court erred in denying his request to seal the records relating to the dismissed petition in the custody of the Jurupa Valley School District. He therefore requests the case be remanded with directions to order the juvenile court to order the Jurupa Valley School District to seal documents in its possession referring to minor's juvenile court proceedings and petition.

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

Section 786, subdivision (a), provides in pertinent part: "If a minor satisfactorily completes . . . a term of probation for any offense, the court *shall* order the petition dismissed. The court *shall* order sealed all records pertaining to that dismissed petition *in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice*. . . ."[3] (§ 786, subd. (a), italics added.)

Section 786, subdivision (e)(2), provides: "An individual who has a record that is eligible to be sealed under this section *may* ask the court to order the sealing of a record pertaining to the case that is *in the custody of a public agency* other than a law enforcement agency, the probation department, or the Department of Justice, and the court *may* grant the request and order that the *public agency* record be sealed *if the court determines that sealing the additional record will promote the successful reentry and rehabilitation of the individual*." (§ 786, subd. (e)(2), italics added.)

Initially, minor asserts a school district is a "public agency" within the meaning of section 786, subdivision (e)(2). The People correctly concede that a school district is a "public agency" for the purposes of this statute. (See Gov. Code, § 53050 ["The term 'public agency,' as used in this article, means a district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include

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[3] "A court *shall not* seal a record or dismiss a petition pursuant to this section if the petition was sustained based on the commission of an offense listed in subdivision (b) of Section 707 that was committed when the individual was 14 years of age or older . . . ." (§ 786, subd. (d); italics added.) It is undisputed that minor's offenses are not listed in section 707, subdivision (b).

the state or a county, city and county, or city."]; *Hovd v. Hayward Unified Sch. Dist.* (1977) 74 Cal.App.3d 470, 472 [vocational skills center was not "public agency" within meaning of Government Code section 53051 requiring public agencies to file certain information with the Secretary of State and county clerk, since it was a subdivision of a district].)

Minor also argues that the court erred in failing to seal his school records relating to the offenses because sealing his school records will promote minor's successful reentry and rehabilitation into society. The People respond that minor has not shown the trial court's order refusing to seal the school records was arbitrary, capricious, or resulted in a manifest miscarriage of justice.

The People initially argue that the trial court's ruling is subject to the abuse of discretion standard, rather than the de novo standard of review as urged by minor. However, the People mistake minor's argument relating to the standard of review. Minor's argument as to the de novo standard of review relates to whether the Jurupa Valley School District is a "public agency" within the meaning of section 786, subdivision (e)(2). That claim involves the interpretation of a statute, which is subject to the de novo standard of review. (*People v. Williams* (2010) 184 Cal.App.4th 142, 146; *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016.) In his reply brief, minor purportedly does not dispute the standard of review is that of abuse of discretion as to whether the trial court erred in refusing to seal his school records.

Subdivision (e)(2) of section 786 provides that a trial court "*may* grant the request and order" the public agency record be sealed "if the court determines that sealing the additional record will promote the successful reentry and rehabilitation of the individual." (Italics added.) "This is the traditional language of discretionary power" [citations], and courts throughout the country have treated the scope of public access as committed to a trial court's discretion. [Citations.]" (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 299; see *People v. Mgebrov* (2008) 166 Cal.App.4th 579, 587.) We will apply the abuse of discretion standard to the issue of whether the court erred in denying minor's request pursuant to subdivision (e)(2) of section 786. (*In re J.W.* (2015) 236 Cal.App.4th 663, 668 [appellate court reviewed the trial court's denial of a petition under section 781 to seal juvenile records for abuse of discretion]; *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1469 [appellate court reviews the trial court's decision to grant or deny a section 782 motion to dismiss a juvenile petition under the abuse of discretion standard].)

"[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377.) If the record shows that a trial court misunderstood the scope of its discretion, then we must remand for an informed exercise of the power. (Cf. *People v. Fuhrman* (1997) 16 Cal.4th 930, 944 [discretion to strike recidivist finding].)

" '[T]he purpose of the juvenile justice system is "(1) to serve the 'best interests' of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and 'enable him or her to be a law-abiding and productive member of his or her family and community,' and (2) to 'provide for the protection and safety of the public . . . .' " ' " (*In re Greg F.* (2012) 55 Cal.4th 393, 417; § 202, subd. (b) [public safety is a consideration coequal to rehabilitation].) The purpose of sealing is to protect minors from future prejudice resulting from their juvenile records. (*In re Jeffrey T.* (2006) 140 Cal.App.4th 1015, 1020.) Further, the juvenile delinquency system is not concerned merely with punishing juvenile offenders; rather, it is concerned with rehabilitating them. (*In re J.W.*, *supra*, 236 Cal.App.4th at p. 667.) In *In re J.W.*, the Court of Appeal upheld the trial court's denial of a petition to seal juvenile records, noting that the petitioner's most recent crimes—attempted robbery and battery—were serious offenses and that insufficient time had elapsed since he had committed those offenses. (*Id*. at pp. 667-668.) The court determined the petitioner was not yet rehabilitated, but left open the possibility of sealing the records after more time had passed, acknowledging that "the passage of time works in his favor, and if appellant furthers his rehabilitation, he will in the future have the opportunity to ask the trial court to seal his records." (*Id*. at p. 670.)

Here, based on a thorough analysis of the record, it appears the juvenile court misunderstood its discretion. Prior to its ruling, the prosecutor argued the school district did not fall within "the intent of the agencies in [section] 786" and requested "that portion

to be stricken, but submit[ted] on the rest of it, the [section] 786 sealing generally." Minor's counsel argued the school district was a public agency within the meaning of the statute. Minor's counsel also pointed out that minor was going to be graduating from high school in December; that he had been doing very well; and that he had plans to continue his education. Counsel therefore argued, "So it's that concern for attending college or graduate school applications where a school may require a high school to divulge their high school records that could impact his future applications to both school, to military, to other things."

In denying minor's request, the juvenile court stated: "Under the circumstances, the Court does believe that we should not include the Unified School District Learning Center in the court's order today. It bears upon his education and his—what the requirements may be for him to get further education in the sense of his history and what his needs are." It is unclear whether the court refused to seal minor's school records because it concluded a school district was not within the scope of section 786 or because the court concluded sealing the school records would not be in minor's best rehabilitative interest. If the juvenile court denied minor's request to seal his school records based on its perception that the school district was not a "public agency," then the court misunderstood its discretion as a school district is a "public agency" within the meaning of subdivision (e)(2) of section 786. If the juvenile court denied minor's request to seal his school records because it determined it was not in minor's best interest, then it appears the court failed to exercise its discretion in determining whether sealing the

school records will promote the successful reentry and rehabilitation of minor.[4] (See *In re J.W.*, *supra*, 236 Cal.App.4th at pp. 667-668.) In any event, it appears the juvenile court abused its discretion because the juvenile court's decision appears to be based on errors. (See *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393 ["[A] reasoned decision based on the reasonable view of the scope of discretion is still an abuse of judicial discretion when it starts from a mistaken premise . . ."]; see also *People v. Cluff* (2001) 87 Cal.App.4th 991, 997 [finding an abuse of discretion where "substantial evidence does not support the critical inference the court relied on in denying [a] motion to strike"].)

Based on the foregoing, we will remand the matter to allow the juvenile court to make a factual determination in the first instance regarding whether sealing minor's school records referring to minor's juvenile court proceedings will promote minor's reentry and rehabilitation.

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[4] The record indicates that since the offenses in August 2013, minor's grades had improved; he had obeyed his curfew; he was respectful at home; he had no conduct issues at school; and he had attended substance abuse counseling and therapy, passed all his drug tests, and had completed 40 of his 50 hours of community service. In addition, nearly two and half years later, minor remained a law abiding citizen, continued to attend therapy, maintained a cooperative and positive attitude, and desired to continue his education.

III

DISPOSITION

The order denying the petition to seal minor's school records in the possession of the Jurupa Valley School District is reversed, and the matter is remanded to the juvenile court for further proceedings consistent with this opinion.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.